

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE DMCA SUBPOENA TO )  
TUMBLR, INC. ) Misc. Action No. 14-91209-NMG  
 )  
 )

REPORT AND RECOMMENDATION ON MOTION FOR CLERK'S ISSUANCE OF  
SUBPOENA PURSUANT TO 17 U.S.C. § 512(H) BY JOSHUA H. OHL<sup>1</sup>

October 7, 2014

Boal, M.J.

Attorney Michael T. Mullaly, on behalf of Joshua H. Ohl, has filed a motion for issuance of a subpoena pursuant to Section 512(h) of the Digital Millennium Copyright Act (“DMCA”). 17 U.S.C. § 512(h).<sup>2</sup> Section 512(h) of the DMCA permits a copyright owner or his agent to obtain and serve a subpoena on an internet service provider seeking the identity of a person alleged to be infringing the owner’s copyright. *Id.*

In order to obtain a subpoena pursuant to Section 512(h), the owner must submit to any United States District Court a request containing the proposed subpoena, "a copy of a notification described in subsection (c)(3)(A),"<sup>3</sup> and a sworn declaration ensuring that the

<sup>1</sup> The District Court referred the case to the undersigned on October 7, 2014. Docket No. 8.

<sup>2</sup> Mullally originally filed the motion on July 21, 2014. Docket No. 1. On September 25, 2014, he withdrew the motion inasmuch as the compliance date listed on the proposed subpoena had passed. Docket No. 6. He also filed a request for issuance of a revised subpoena with a new date of compliance. Docket Nos. 5, 7.

<sup>3</sup> Subsection (c)(3)(A) provides that:

To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider

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Report and Recommendation accepted and  
adopted. *SMG, Gorton, USDJ 11/6/14*